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10 August 1970

## MEMORANDUM FOR THE RECORD

SUBJECT: Protecting Privacy and the Rights  
of Federal Employees (Ervin Bill)

Detailed hereinafter is an analysis of the appropriate sections of the Ervin Bill.

A. Section 1(a) makes it unlawful for a Federal Official to request any civilian employee or applicant to disclose his race, religion or national origin or that of his forebears. It does not prohibit inquiry concerning citizenship of the individual if such citizenship is a statutory requirement of his obtaining employment. An exception has been granted whereby inquiry of the individual concerning his national origin or citizenship and that of his forebears is permitted in order to determine his suitability for assignment to undertakings related to the national security within the U.S. or any activities of any nature outside the U.S. The proposed law does not limit the existing authority of the Executive Branch to acquire such information by means other than self-disclosure.

COMMENT

Our PHS requires an applicant to list his citizenship, previous nationality, if any, and the present and former citizenship of his/her spouse, parents, father-in-law and mother-in-law, and the citizenship of children, brothers and sisters and relatives by blood, marriage or adoption who (1) either live abroad, (2) are not U.S. citizens, or (3) work for a foreign government. The Ervin Bill covers only the applicant or employee and his forebears. It does not cover his spouse, children, or in-laws. It would appear that our PHS need not be amended if the Ervin Bill is enacted into law.

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B. Section 1(b) protects an employee from compulsory attendance at meetings and lectures on matters unrelated to his official duties. Health and safety meetings, as well as meetings called to publicize charitable fund campaigns and savings bond drives are permitted.

However, it would be unlawful for the Agency to "take notice" of the attendance of one of its employees at a meeting held by a subversive group.

COMMENT

The effect of this Section, as set forth in the preceding paragraph has been brought to the attention of the Chairman, House Committee on Armed Services, since this was obviously not the Senate's intent.

C. Section 1(c) protects an employee from compulsory participation in activities unrelated to his official duties, i. e., civic functions, political programs or community endeavors. Activities such as publicizing blood-donation drives, or Agency programs, benefits or services are permitted. For example, the appointment of UGF Keymen would apparently be allowed.

D. Section 1(d) makes it unlawful to require an employee to make any report of his activities not related to the performance of his official duties unless there is reason to believe that the employee is engaged in outside activities or employment in conflict with his official duties.

COMMENT

This provision might require the amendment of   (Limitations on Outside Activities) insofar as part-time employment, operating amateur radio stations overseas, some private foreign travel, unofficial courses of instruction, contacts with foreigners, joining clubs and organizations and attending conferences are concerned.

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E. Section 1(e) deals with psychological testing. The DCI or his designee after making a personal finding with regard to each individual that the test or information is necessary to protect the national security can use such tests for the purpose of inquiring into sensitive areas of religious beliefs, personal family relationships, and sexual attitudes.

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F. Section 1(f) forbids polygraph testing designed to elicit from an employee/applicant information concerning his personal relationship with any person connected with him by marriage or blood, or concerning his religious beliefs or practices or concerning his attitude or conduct with respect to sexual matters. However, as in psychological testing, the DCI or his designee can authorize polygraph testing in these areas after he makes a personal finding with regard to each individual that such test or information is required to protect the national interest.

Presumably the DCI could designate the Director of Security as his designee and the Director of Security could approve Form , thus requiring no change in our polygraph program.

G. Section 1(g)(h)(i)(j); these Sections protect employees from (1) requests from Agency officials to support the nomination and election of anyone to public office; (2) coercion with regard to purchasing government securities or making donations to any institutions or cause; or (3) requests to disclose any items of property, income or other assets or liabilities other than specific items which tend to indicate a conflict of interest. However, the DCI or his designee can require personal financial statements after he makes a personal finding with regard to each individual that such information is required to protect the national security. Since there would be few requirements for this type data, the DCI or his designee the Director of Security or the Director of Personnel would make this individual determination.

H. Section 1(k) protects employees from being interrogated concerning alleged misconduct, which could lead to disciplinary action, without the presence of counsel or another person of his choice. However, CIA employees may be accompanied only by a person of his choice who is also a CIA employee or by counsel who has been approved by the Agency for access to the information involved. Moreover, Section 8 permits the DCI to personally certify that disclosure of any information is inconsistent with the provision of any statute or executive order.

#### COMMENT

The Bill does not define "interrogation." If a supervisor calls in a subordinate for being consistently late for work, is the employee entitled

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to counsel? If the employee desires to have [ ] as his attorney, does the Agency have to make an "approval" determination on this individual or does the Agency merely give a list of cleared attorneys to the employee?

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I. Section 4 permits an employee/applicant the right to bring a civil action in the courts if he feels his rights under the act have been violated. However, the DCI could, if classified data were involved, invoke the provisions of Section 8 and prohibit, under certain conditions, the submission of classified information to the court. This provision also applies to Section 5 covering an appeal to a "Board of Employees Rights," by an employee. Moreover, Section 7 requires CIA employees to exhaust internal remedies and to file a written complaint and afford the Agency 120 days to redress the violation. After 120 days the employee could, if not satisfied, appeal to the Courts or the Board.

Nothing in this entire act affects the DCI power to terminate employment under 50 USC 403(c).

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1	[REDACTED]		
2	OGC, 7D07 Hdqrs.		
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	ACTION	DIRECT REPLY	PREPARE REPLY
	APPROVAL	DISPATCH	RECOMMENDATION
	COMMENT	FILE	RETURN
	CONCURRENCE	INFORMATION	SIGNATURE
<b>Remarks:</b>  <p style="text-align: center;">For your information and consideration, this is not the final position of OS but simply a working paper prepared by me.</p>			
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